

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SARMIENTO,

Petitioner,

Case Number: 05-cv-74897

v.

HONORABLE PAUL D. BORMAN

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

DAVID SARMIENTO,

Petitioner,

Case Number: 05-cv-74662

v.

HONORABLE PAUL D. BORMAN

MICHIGAN DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

**ORDER (1) DISMISSING PETITION FOR WRIT OF HABEAS CORPUS FILED
IN CASE NUMBER 05-CV-74897 WITHOUT PREJUDICE AND (2) DIRECTING
CLERK OF COURT TO APPLY FILING FEE PAID IN CASE NUMBER 05-CV-74897
TO CASE NUMBER 05-CV-74662**

Petitioner David Sarmiento, a state inmate currently incarcerated at the Florence Crane Correctional Facility in Coldwater, Michigan, filed a habeas corpus petition on December 8, 2005. That petition (First Petition) was assigned to the undersigned District Judge and assigned Case Number 05-cv-74662. Almost three weeks later, an identical habeas corpus petition (Second Petition) was filed with the Court and assigned to the Honorable Avern Cohn and assigned Case Number 05-cv-74897. The Second Petition was reassigned to the undersigned District Judge, pursuant to Local Rule 83.11, as a companion case to the First Petition. See Order Regarding Reassignment of Companion Case, Jan. 19, 2006.

When Petitioner filed the First Petition, he did not submit the \$5.00 filing fee or an

application to proceed *in forma pauperis*. The Court, therefore, issued an Order to Correct Deficiency, requiring Petitioner either to pay the \$5.00 filing fee or to submit an application to proceed *in form pauperis*. Petitioner then filed the Second Petition, which was accompanied by the \$5.00 filing fee. The Court concludes that, rather than filing a Second Petition, Petitioner intended to correct the deficiency in the First Petition by paying the \$5.00 filing fee. Therefore, the pending Second Petition is duplicative of the First Petition and shall be dismissed without prejudice.

Accordingly, **IT IS ORDERED** that the petition filed in Case Number 05-cv-74897 is **DISMISSED WITHOUT PREJUDICE**.

The Court has determined that the filing fee paid in Case Number 05-cv-74897 was intended to cure the deficiency in Case Number 05-cv-74662. Therefore, the Court **ORDERS** the Clerk of Court to credit the \$5.00 filing fee paid in Case Number 05-cv-74897 to Case Number 05-cv-74662.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: February 9, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 9, 2006.

s/Jonie Parker
Case Manager